

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re:  
LLS AMERICA, LLC,  
Debt

NO: CV-12-482-RMP  
Bankruptcy No: 09-06194-PCW11  
Adversary No: 11-80295

BRUCE P. KRIEGMAN, solely in his capacity as court-appointed Chapter 11 Trustee for LLS America LLC,

ORDER GRANTING MOTION FOR  
DEFAULT AND JUDGMENT

Plaintiff,  
vs.  
1418490 ONTARIO, LTD., et al.,  
Defendant

Before the Court is bankruptcy trustee Bruce P. Kriegman's Motion for  
of Default and Judgment as to Defendant Cheryl Birner, ECF No. 8. The  
Court has reviewed the motion, its attachments, the Court's file, and the  
bankruptcy Court's file for the adversary action 11-80295-PCW11.

This case arose as an adversary action as part of the bankruptcy of LLS

1 America, LLC. This Court withdrew the reference to this action, set a trial date,  
2 and referred the matter back to the Bankruptcy Court for that court to address  
3 pretrial matters.<sup>1</sup> The Bankruptcy Court entered orders granting the Bankruptcy  
4 Trustee's motions for default and for default judgment. The trustee now moves  
5 this Court for entry of default and default judgment.

6 "When a party against whom a judgment for affirmative relief is sought has  
7 failed to plead or otherwise defend, and that failure is shown by affidavit or  
8 otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 54(a). "If the  
9 plaintiff's claim is for a sum certain or a sum that can be made certain by  
10 computation, the clerk—on the plaintiff's request, with an affidavit showing the  
11  
12

---

13 <sup>1</sup>The above-captioned action, CV-12-482-RMP, and CV-11-364-RMP both  
14 arise from the bankruptcy adversary action 11-80295-PCW11. The Court entered  
15 an order withdrawing the reference to 11-80295-PCW11 in CV-11-364-RMP. The  
16 Court clarified in CV-11-364-RMP that withdrawal of the reference extended to  
17 the entire adversary action and not just the parties seeking withdrawal.

18 Accordingly, this action has been withdrawn, trial has been set, and the matter has  
19 been referred back to the Bankruptcy Court for disposition of pretrial matters as  
20 expressed in the Court's orders in CV-11-364-RMP. An order of consolidation is  
forthcoming.

1 amount due—must enter judgment for that amount and costs against a defendant  
2 who has been defaulted for not appearing.” Fed. R. Civ. P. 54(b).

3 Pursuant to the Court’s order on motion for withdrawal of reference, this  
4 Court will treat the Bankruptcy Court’s orders entering default and default  
5 judgment as proposed findings of fact and conclusions of law. The instant motion  
6 was filed on September 5, 2012. Defendant Cheryl Birner has filed no objection.  
7 After a review of the record before this Court and the bankruptcy court, the Court  
8 concludes that default is appropriate and default judgment shall be entered.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The trustee’s Motion for Entry of Default and Judgment, **ECF No. 8**, is  
11 **GRANTED.**  
12 2. Defendant Cheryl Birner is in default, and default of said Defendant is  
13 hereby entered.  
14 3. The Court will enter default judgment by separate order.

15 **IT IS SO ORDERED.**

16 The District Court Executive is hereby directed to enter this Order and to  
17 provide copies to counsel and to Judge Patricia C. Williams.

18 **DATED** this 1st day of November 2012.

19 \_\_\_\_\_  
20 *s/ Rosanna Malouf Peterson*  
ROSANNA MALOUF PETERSON  
Chief United States District Court Judge